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number of years; and they now must request the Judicial Commissioner to follow that which is the ordinary practice and to make a certificate or statement on which their Lordships can act.

Solicitors for the petitioner:—Messrs. *Barrow & Rogers.*

C. B.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Tottenham.

1888 *March 2.*

SYAMA SUNDERI DASSYA AND ANOTHER (PLAINTIFFS) *v.* JOGOBUNDHU SOOTAR (DEFENDANT).

Evidence—Thak-maps—Boundary—Title, question of.

The sole question for determination being a question of the boundary of two taluqs, the Judge hearing the case refused to give effect to a certain thak-map which had been prepared in 1859, and upon the face of which appeared what were admitted by the parties then owning the taluqs to be the boundary lines of the taluqs at the time; no evidence was given showing that these boundary lines had ever been altered.

Held, that the map was clearly evidence of what the boundaries of the properties were at the time of the permanent settlement, and also as to what they admittedly were in 1859.

SUIT for the recovery of possession of certain land. Plaintiff No. 1 alleged that he had purchased taluq No. 703 at an auction sale held under Act XI of 1859, and that he had been formally put into possession thereof by the Collector; he further alleged that he had sold an eight-anna share in this taluq to plaintiff No. 2; that he and his co-plaintiff had endeavoured to occupy these lands, but were prevented from so doing by the defendant who alleged that the land claimed did not belong to taluq No. 703, but to taluq No. 600; and that he was a howlatdar under the proprietors of this latter taluq.

The Moonsiff held that as the dispute was not one between two rival taluqdars, and as the defendant had failed to establish

* Special Appeal No. 2357 of 1886, against the decision of Baboo Bani Madhub Mitter, First Subordinate Judge of Dacca, dated the 18th August, 1886, reversing the decision of Baboo Nil Money Nag, Second Moonsiff of Munshigunge, dated 31st January, 1885.

his connection with the proprietors of taluq No. 600 or to show that he had been in possession for over twelve years, the plaintiffs were entitled to recover if they could show that the land belonged to taluq No. 703, and after finding that the land fell within the boundaries of taluq No. 703, as given in a certain thak-map produced by the plaintiffs which had been prepared in 1859, held that the land appertained to taluq No. 703 and gave the plaintiffs a decree.

The defendant appealed to the Subordinate Judge on the ground that the thak-map being the only evidence produced to show that the land fell within the boundaries of taluq No. 703, there was no evidence of title on which to give the plaintiffs a decree.

The Subordinate Judge found that the defendant was in possession of the lands in dispute, and that therefore the onus of proving title lay on him, and that he had failed to prove this, the thak-map being no evidence of title, it being at most only evidence of possession at the time of the preparation of the map, and no evidence at all that the lands formed portion of taluq No. 703 at the time of the permanent settlement; and on the authority of the cases of *Mohesh Chunder Sen* v. *Juggut Chunder Sen* (1) and of *Joytara Dassee* v. *Mahomed Mobaruck* (2) held, reversing the decision of the Moonsiff, that the plaintiffs had failed to establish their title. Plaintiff No. 1 having died, his wife and sole heir was substituted on the record in his place.

The plaintiffs appealed to the High Court.

Baboo *Rash Behary Ghose* for the appellants contended that the thak-map was cogent evidence as fixing the boundary of taluq No. 703, and as showing the land in dispute as being within the plaintiffs' taluq.

Baboo *Basanto Kumar Bose* for the respondent.

The judgment of the Court (PETHERAM, C. J., and TOTTENHAM, J.,) was as follows:—

We think that the Subordinate Judge has taken a wrong view of what is, or is not a question of title, and it is necessary that this case should be returned to him for retrial.

(1) I. L. R., 5 Calc., 212. (2) I. L. R., 8 Calc., 975.

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The suit is a suit brought by the purchasers at a revenue sale of a taluq against the holder of a neighbouring taluq, to recover possession of a piece of land which, he says, belongs to his taluq, and which the defendant says belongs to the owner of another taluq, under whom he holds. The only question to be tried is, whereis the boundary line between the two properties?

The plaintiffs, as I said just now, bought at a revenue sale, and the effect of that sale was to put them in the same position as that which the person occupied with whom the property was originally settled, that is to say, on default of payment of the revenue, the Government puts up for sale the whole estate out of which the revenue which had defaulted was payable, and the purchaser at such sale is entitled to get the whole of the settled estate which was sold for non-payment of the revenue. Well, the plaintiffs bought that, and the question which has to be decided is, what is the estate which had been sold, and that depends upon the position of the boundary between it, and the one next to it.

There is no dispute as to the title to the taluqs; it is admitted that the plaintiffs' are entitled to the one, and the defendant or his superior landlords to the other, and the titles do not come into question in any way; the only question as I said before is, where the boundary line is to be?

It appears that, in the year 1859, a thakbust survey was made and maps were prepared, and upon the face of these maps appear, what were admitted by the parties to be, the boundary lines of the various estates at that time, and if they were admitted to be so at that time, that is the strongest evidence that they were so at the time of the permanent settlement, because there is nothing to show that there has been any change in the physical features of the place, or the relative positions of the boundary lines, from that time, down to the time of the thakbust survey. So that the thakbust maps are clearly evidence to show what the boundaries of the properties are. No doubt, the boundary of a property may, in one sense, be said to be a question of title, because upon the question, where the boundary is, depends the question, which person is entitled to the property. But by title, within the meaning of the Acts, is meant the nature of a man's title, and not what lands he holds under that title. We

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think, therefore, that the Subordinate Judge was wrong in giving no effect to this thakbust map. It is not only evidence, but is very good evidence as to what the boundaries of the property were at the time of the permanent settlement, and also as to what they admittedly were in 1859.

Under these circumstances, we set aside the decision of the Subordinate Judge, and remand the case to him in order that he should reconsider the matter, giving effect to the thakbust map, and to the remarks which we have now made in this case. Costs will abide, and follow, the event.

T. A. P. *Case remanded.*

ORIGINAL CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Wilson and Mr. Justice Tottenham.

1888 *August* 16.

LUCKHI NARAIN KHETTRY (DEFENDANT) *v.* SATCOWRIE PYNE (PLAINTIFF).*

Registration Act (III of 1877), ss., 23, 24, 76, 77—Limitation for registration or order of refusal of a document admitted for registration by Registrar —Denial of execution —Refusal to attend—Limitation for suit under s. 77 of the Registration Act.

No period is prescribed by Act III of 1877, within which a document which has been admitted for registration, may be registered, or within which the order of refusal by the Registrar to register the document must be made.

There is nothing in ss. 76 and 77 to compel the Registrar in cases where there has been no express denial of execution, but where the executant refuses to attend at his office, to make his order of refusal within the time limited for admission of execution by ss. 23 and 24. Limitation in respect of a suit under s. 77 begins to run from the date of such order. *Mukhun Lall Panday* v. *Koondun Lall* (1) and *Shama Charan Das* v. *Joyenoolah* (2) relied on. *In the matter of Buttobehary Banerjee* (3) dissented from.

THIS was an appeal from the judgment of Trevelyan, J., in a suit under s. 77 of the Registration Act III of 1877, to compel

* Original Civil Appeal No. 21 of 1888, against the judgment of E. J. Trevelyan, Esq., one of the Judges of this Court, dated the 15th June 1888.

(1) 15 B. L. R., 228; S. C., L. R., 2 I. A., 210; 24 W. R., 75.
(2) I. L. R., 11 Calc., 750. (3) 11 B. L. R., 20.